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# Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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**Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

## Visit to the Plurinational State of Bolivia undertaken from 2 to 11 May 2017: observations and recommendations addressed to the State party

**Report of the Subcommittee*, ****

* In accordance with article 16 (1) of the Optional Protocol, the present report was transmitted confidentially to the national preventive mechanism on 28 July 2017. On 28 May 2018, the State party communicated its decision to make the report and its responses public.

** The annexes and notes to the present document are being circulated in the language of submission only.

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# I. Introduction

1. Pursuant to the Optional Protocol to the Convention against Torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment undertook its second visit to the Plurinational State of Bolivia from 2 to 11 May 2017.[1] The Subcommittee held meetings with senior State officials, indigenous leaders and representatives of the United Nations and of civil society.[2] The Subcommittee visited a total of 23 places of deprivation of liberty in La Paz, El Alto, Cochabamba, Santa Cruz, Sucre and Trinidad.

2. In general, the Subcommittee observed a readiness to facilitate the visit. The Subcommittee had swift access to places of deprivation of liberty, and the liaison officers cooperated with the Subcommittee in an effective manner.

3. However, the Subcommittee encountered obstacles when it attempted to gain access to medical records in the San Juan de Dios Psychiatric Hospital in Sucre. In Mocoví Prison, the Subcommittee was unable to speak in private with persons deprived of their liberty — an essential part of its mandate — because of the prison staff's inaction and lack of cooperation, the difficulties created by inmate representatives (*delegados*) — prisoners who head up the facility's self-governing structure — and threats of reprisals against the inmates.

4. The present report contains the Subcommittee's findings and recommendations concerning the prevention of torture and ill-treatment of persons deprived of their liberty in the Plurinational State of Bolivia. The generic term "ill-treatment" is used throughout the report to refer to any form of cruel, inhuman or degrading treatment or punishment.

5. **The Subcommittee requests the Bolivian authorities to provide a detailed account within three months of the date of this report's transmission of the measures taken to act upon the recommendations contained herein.**

6. In accordance with article 16 (2) of the Optional Protocol, the report will remain confidential until such time as the State decides to make it public, except as provided for in article 16 (4). The Subcommittee is persuaded that publication can make a positive contribution to the prevention of torture and ill-treatment.

7. **The Subcommittee recommends that the Plurinational State of Bolivia, following the example of the great majority of States parties to the Optional Protocol, request the publication of this report, in addition to the report on the Subcommittee's previous visit, which took place in 2010.**[3]

8. The Subcommittee wishes to draw attention to the Special Fund established pursuant to article 26 of the Optional Protocol. The recommendations contained in reports that have been made public can be used by the State party as a basis for applying for resources from the Special Fund for use in specific projects.

# II. National preventive mechanism

9. It has been more than ten years since the Plurinational State of Bolivia ratified the Optional Protocol. The State party's national preventive mechanism should have been set up or designated, in fulfilment of its obligations under the Optional Protocol, by June 2007.

10. During its visit in 2010, the Subcommittee noted with appreciation the adoption of the National Human Rights Action Plan 2009–2013, in which the establishment of the national preventive mechanism was highlighted as a priority, and the bill on the national preventive mechanism that the Ministry of Justice intended to submit to the legislature in 2010. Instead, however, the State party established the Service for the Prevention of Torture

[1] El Subcomité realizó su primera visita al Estado Plurinacional de Bolivia del 30 de agosto al 8 de septiembre de 2010.

[2] Véase el anexo I.

[3] Véase CAT/OP/BOL/R.1.

by Act No. 474 of 30 December 2013 as an equivalent to the national preventive mechanism.

11. The Subcommittee held meetings with the Service, and the two bodies conducted joint visits to different places of deprivation of liberty. The Subcommittee noted with appreciation the Service's 64 unannounced visits to places of deprivation of liberty since it entered into operation in July 2016. It also took note of the Service's multidisciplinary composition, the gender parity among its staff and other points.

12. Although it acknowledges the Service's work, the Subcommittee is seriously concerned that the Service's independence is severely compromised by the fact that its legal status is such that it is attached to the Ministry of Justice. In this regard, the Service does not meet the requirements of the Optional Protocol. In addition, Act No. 474, which has a single article, does not clarify key issues regarding the national preventive mechanism, such as what its mandate and powers are to be, how its members are to be appointed or how it is to be funded and held to account. These omissions run counter to the fulfilment of the State party's obligations under the Optional Protocol.

13. The Subcommittee notes that gaps in the legal provisions whereby the Service is to act as the national preventive mechanism have a direct impact on its work, as it is not perceived as an independent body. For example, the Service uses the logo of the Ministry of Justice on its documents and, on several occasions, officials of places of deprivation of liberty and persons deprived of their liberty referred to the Service as a State inspection agency. In addition, while recognizing the goodwill of the members of the Service, civil society organizations emphasized how little legitimacy it enjoys and drew attention to its perceived lack of independence, while also making references to possible conflicts of interest.

14. The Subcommittee noted that the Service's working methods place disproportionate emphasis on the material conditions of detention rather than on a detailed examination of allegations of torture and ill-treatment. This emphasis was observed during the joint visits made to San Pedro Prison and the Miraflores military barracks and was also reflected in the Service's internal forms and protocols, which the Subcommittee reviewed. The Subcommittee is also concerned that during the visit to San Pedro Prison, no confidential individual interviews with persons deprived of their liberty were held and that the group interviews were held in the presence of inmate representatives, which could give rise to a serious risk of reprisals.

15. The authorities advanced a number of arguments that can be summed up as: "The Service is better than nothing." It should be noted that the Subcommittee is not calling for the dissolution of the Service, which may be a legitimate supplement to State oversight systems, but its existence should not preclude the establishment of a national preventive mechanism that is in full compliance with the Optional Protocol.

16. **Recalling that, according to the Optional Protocol, functional independence, which States parties are bound to guarantee, is the key determinant of the effectiveness of a national preventive mechanism, the Subcommittee urges the Bolivian authorities to:**

(a) **Designate or set up, by means of a constitutional or legislative amendment, a national preventive mechanism that enjoys complete financial and operational autonomy in the performance of its functions;**

(b) **Ensure that the new legislation clearly sets forth the national preventive mechanism's mandate and powers and includes specific provisions on the appointment of members, the length of their terms of service, their independence and the grounds for their dismissal;**

(c) **Provide the national preventive mechanism with the resources to perform its work effectively;**

(d) **Ensure that the national preventive mechanism complies fully with the other requirements set forth in the Optional Protocol and the guidelines on national preventive mechanisms.**[4]

# III. Allegations of torture and ill-treatment and impunity

## A. Allegations of torture and other ill-treatment

17. Several persons interviewed by the Subcommittee stated that acts of torture and ill-treatment are frequently committed by members of the police force and the prison service and by inmates belonging to the prisons' self-governing structure as a method of investigation, extortion, punishment or discipline.

18. During the visit to San Juan de Dios Psychiatric Hospital in Sucre, the Subcommittee noted the excessive and prolonged use of chemical, physical and mechanical restraints (for example, patients being tied to chairs with belts as a means of immobilizing them).

19. In particular, the Subcommittee wishes to highlight, as matters of great concern, the following allegations:

(a) In Chonchocoro Prison, a maximum security facility, prisoners reported being taken from their cells at night — both by prison staff and by section representatives and other members of the prison's self-governing hierarchy — and being beaten, sometimes stabbed, tied to wire fencing and forced to spend the night in the open. According to statements collected by the Subcommittee, the practice of punishing and "baptizing" or "welcoming" new arrivals also involved insults, disproportionate use of force, beatings administered to "teach them what would happen if they get out of line", blows with sticks on the back and groin, asphyxiation with plastic bags, the use of irritant gases, orders to strip and do push-ups, extreme physical exercise and immersion in cold water.

(b) In the Nueva Vida Santa Cruz Social Reintegration Centre for Juvenile Offenders (CENVICRUZ), security personnel responsible for maintaining discipline at the Centre allegedly took adolescents out of their bunk rooms at night, beat them and tied them to wooden stakes in the courtyard, where they had to crouch with their heads down, deprived of sleep, sometimes for more than 24 hours. At the Cometa Centre, in Cochabamba, several interviewees reported the excessive use of force and the use of electric shocks, irritant gas, sleep deprivation and public beatings on the facility's soccer field.

20. Furthermore, the Subcommittee is concerned about the inhumane material conditions existing in the punishment cells (referred to as "cages", "holes" or "dungeons") in the prisons it visited. In the Mocoví Men's Prison, for example, a single punishment cell housed 15 prisoners, who, unable to move for want of space, were half-naked, had not received food and showed visible marks of beatings and whippings on their backs and inner thighs. Some of them said that they had been in the cell, which had no toilet, for more than three weeks, sleeping on the floor on dirty blankets. The Subcommittee noted similar inhumane conditions in the Chonchocoro "cages". The Subcommittee has concluded that the inhumane material conditions of detention in these cells (overcrowding, a lack of food, a complete lack of hygiene), coupled with the lack of safeguards (medical assistance, access to justice) and long periods of detention in these conditions, amount to ill-treatment and could in some cases be considered torture.

21. **The Subcommittee therefore recommends that the State party:**

(a) **Regularly provide police and prison officers with training in the categorical observance of the absolute and mandatory prohibition of torture and ill-treatment and ensure that this prohibition is incorporated into any general rules or**

[4] CAT/OP/12/5.

**instructions concerning the duties and functions of police and prison personnel that are issued;**[5]

(b) **Adopt a clear and comprehensive prison policy in order to ensure that the prison disciplinary system is administered exclusively by prison staff (in accordance with Sentence Enforcement and Supervision Act No. 2298) rather than by section representatives and/or other members of the prisons' self-governance structure;**

(c) **Suppress the use of chemical, mechanical and physical restraints in psychiatric institutions in accordance with article 16 of the Convention on the Rights of Persons with Disabilities;**

(d) **Urgently conduct a nationwide audit of the material conditions in punishment cells where detainees are actually held and put in place an action plan to clean and renovate them or close them if the conditions they afford are not in line with international standards.**

## B. Impunity

22. The Subcommittee was informed that the reasons why victims did not report the perpetrators (police officers, prison officers or members of the prisons' self-governing hierarchy) of such abuses included their fear of being mistreated or tortured again, the risk of reprisals being taken against them or their families and the lack of effective reporting and complaint mechanisms.

23. The Subcommittee is concerned by reports of three violent deaths in Chonchocoro Prison that have not been investigated either by criminal justice or administrative authorities.

24. **The Subcommittee urges the State party to open and pursue thorough investigations into allegations of torture and ill-treatment reportedly committed by police officers and/or prison personnel and to establish the responsibility of superior officials who instigate, encourage, consent to or acquiesce in such acts.**[6]

25. **The Subcommittee reiterates its previous recommendation concerning the Forensic Investigation Institute and the implementation of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and urges the State party to take measures to ensure that forensic reports are prepared in accordance with the Istanbul Protocol and in such a way as to make it possible to document suspected cases of torture.**[7] **The Subcommittee also recommends that, in accordance with the obligations assumed by the State party under articles 12 and 16 of the Convention against Torture, a prompt and impartial investigation be conducted wherever there is reasonable ground to believe that an act of torture or ill-treatment has been committed. Such investigations should be undertaken even in the absence of a formal complaint.**

26. Both the Committee against Torture and the Subcommittee have concluded that the current definition of torture set forth in article 295 of the Criminal Code is inadequate.[8] The reasons for this conclusion were shared by the Subcommittee with the Plurinational State of Bolivia in the Subcommittee's report on its first visit, which took place in 2010.[9]

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[5] Declaración sobre la Protección de Todas las Personas contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, aprobada por la Asamblea General en su resolución 3452 (XXX), de 9 de diciembre de 1975, art. 5.

[6] Observación general núm. 2 (2008) sobre la aplicación del artículo 2 por los Estados partes, párr. 26.

[7] Véase CAT/OP/BOL/R.1, párr. 56.

[8] Véase A/56/44, párr. 95, apdo. a) y CAT/C/BOL/CO/2.

[9] A saber, a) la tipificación actual no comprende la totalidad de los elementos previstos en la legislación internacional aplicable, y prevé penas que no están de acuerdo con la gravedad de los hechos; b) dicha tipificación coloca a las víctimas en una situación de total indefensión legal, y más

27. **In the seven years since the Subcommittee's first visit, no change whatsoever has been made in the relevant legislation. The Subcommittee must once again refer, and with great concern, to its previous observations and recommendations.**[10] **In particular, the Subcommittee reiterates the urgent need for the State to adopt the necessary legislative measures to bring its laws into line with the international treaties on torture that it has ratified, to avoid any risk of impunity and to ensure the proper investigation of cases of torture and the punishment of the perpetrators.**

# IV. Follow-up to the recommendations made by the Subcommittee in 2010

## A. Causes and consequences of the excessive use of pretrial detention

28. The Subcommittee notes that the use of pretrial detention has not abated since its visit in 2010. Pretrial detainees currently account for more than 70 per cent of the prison population. This has led to extreme overcrowding, as in San Pedro Prison, which is operating at 550 per cent capacity, or Palmasola, which is operating at 700 per cent capacity.

29. Based on its two visits, the Subcommittee identified the following reasons for the present high rates of pretrial detention:[11]

(a) A failure to adopt alternative non-custodial measures even though most people placed in pretrial detention have no criminal records and are accused of petty offences. In practice, pretrial detention remains the rule, although article 221 of the Code of Criminal Procedure states that it should be the exception;

(b) Interference with the work of judicial authorities responsible for deciding whether to release suspects from custody before their hearings; this interference takes the form of pressure from the public and from prosecutors who advocate a punitive approach to justice. The Subcommittee was informed that the Prosecution Service gauges its effectiveness by the number of requests for pretrial detention that it makes and that judges fail to order alternatives to detention for fear of being subjected to disciplinary proceedings, especially in higher-profile cases;

(c) The imposition by the courts of restrictive and discriminatory conditions in determining eligibility for alternative measures, with bail being set too high in most cases, thereby forcing members of the poorest and most marginalized groups to remain in prison;[12]

(d) Delays and breaches of procedural time limits. It has been reported[13] that more than 70 per cent of pretrial hearings are either suspended because the judge is not in attendance or are held in the absence of a prosecutor.[14] Statements from numerous persons made it clear to the Subcommittee that hearings are also suspended as a result of deliberate delays in transferring detainees from prison to the courts, as this procedure has become a source of illegal revenue for prison and police authorities;

(e) Corruption in the penal system, which, as the Subcommittee noted in 2010, has a significant impact on people with limited resources.[15] Many informants said that lawyers serve as intermediaries who pass on requests for monetary payments in exchange

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aún, favorece la impunidad de los perpetradores, y c) el crimen de tortura en el Estado Plurinacional de Bolivia sigue siendo un delito prescriptible.

[10] Véase CAT/OP/BOL/R.1, párrs. 28 a 32.

[11] Véase ibid., párrs. 54, 204 y 205.

[12] Véase CAT/OP/BOL/R.1, párrs. 138 y 139. En su jurisprudencia, el Subcomité ya estableció un vínculo entre pobreza, discriminación y prisión preventiva.

[13] Estudio realizado por la Fundación CONSTRUIR con apoyo de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en el Estado Plurinacional de Bolivia en las ciudades de La Paz y El Alto.

[14] Lo que limitaba la capacidad de la defensa de rebatir los argumentos vertidos en la imputación formal en presencia del fiscal y del juez.

[15] Véase CAT/OP/BOL/R.1, párrs. 38, 52, y 69 a 74.

for avoiding imprisonment and that such requests sometimes come straight from judges and prosecutors themselves;

(f) Non-compliance with the maximum period for pretrial detention of 24 months established in the Code of Criminal Procedure, which occurs because judges do not exercise due oversight in respect of the duration of pretrial detention. The Subcommittee was informed that the Public Prosecution Service has a system for registering and monitoring criminal cases, but, according to the information gathered by the Subcommittee (including information on a documented case in which a person had been in pretrial detention for 10 years), the system does not issue alerts when time limits are exceeded, chiefly because public officials do not enter the necessary information into the system;

(g) The existence of legislation that is conducive to the imposition of pretrial detention. Procedural risk assessments are subject to arbitrary interpretations by judges of, for example, the provisions regarding cases in which a defendant may pose a danger to society or a flight risk.

30. **The Subcommittee urges the State party to undertake the formulation of a criminal justice policy that, incorporating an approach that takes into consideration both vulnerability and human rights, does away with the widespread use of pretrial detention and favours restorative forms of justice.**

31. **The Subcommittee also urges the State party to implement the recommendations made in its 2010 report on which action has not yet been taken, in particular those presented in paragraphs 56 and 143.**[16]

32. **In addition, the Subcommittee recommends that the State party:**

(a) **Uphold the principle of the independence of judges and adopt an effective strategy to prevent them from being harassed;**

(b) **Adopt mechanisms for detecting and sanctioning corrupt practices;**

(c) **Ensure that the conditions for granting non-custodial measures are commensurate with the social and economic means of the accused and give suitable consideration to the customs and way of life of indigenous peoples in keeping with the spirit of the country's Constitution;**

(d) **Inspect court records to identify cases in which the administration of justice is delayed and conduct regular, independent judicial reviews of the length and conditions of pretrial detention.**

## B. Delegation of authority, self-government and corruption

33. During its 2010 visit, the Subcommittee noted the existence of "a parallel system of 'internal governance' in prisons throughout the country" and expressed concern that self-government was an instrument of "social control and discipline". The Subcommittee noted that there was a system of "orderly coexistence" between the prison system and the self-governing section committees in the form of unwritten agreements granting certain freedoms and privileges.[17]

34. Seven years later, the Subcommittee noted that the prisoners' system of self-government was more firmly established than it had been during the Subcommittee's previous visit. A first point to be made in this connection is that self-government gives rise to greater inequalities in the material conditions in which prisoners are housed. In San Pedro Prison, Mocoví Men's Prison, San Sebastián Men's Prison and San Roque Prison, the inmate-led governance structure determines job assignments in areas related to material

[16] Véase ibid., párr. 54, relativo a la capacitación a jueces y operadores de justicia para una correcta aplicación e interpretación de la normativa relacionada con medidas alternativas a la detención; y párr. 143 relativo a un mejor uso de las medidas sustitutivas, la aceleración de los procesos que permitan una reducción de la detención preventiva, y la aplicación restringida y motivada por parte de las autoridades judiciales de la detención preventiva.

[17] Ibid., párr. 159.

conditions and rehabilitation, including health services, employment, the occupation of cells and clean-up activities.

35. In its jurisprudence, the Subcommittee has noted the direct correlation between corruption and the prison self-governance system. The Subcommittee is deeply concerned about the existence of entrenched corruption, which is considered "normal" by both prisoners and officials, in most of the prisons of the Plurinational State of Bolivia.

36. This corruption takes such forms as renting, selling and buying cells for amounts that vary according to their size and how comfortable they are and charging prisoners for access to public telephones, clinics or dispensaries, food, greater comforts or privacy for family visits. Economic inequalities among prisoners exacerbate the vulnerability of the weakest, who are forced to live in conditions that are tantamount to ill-treatment. Some inequalities are extreme, such as, for example, charges for the right to sleep on a mattress in Chonchocoro Prison or the operation of a sauna in San Pedro Prison.

37. The Subcommittee takes note with great concern of a significant increase in the imposition of disciplinary sanctions by prison inmate representatives. The Subcommittee is concerned about the glaring absence of safeguards against torture, given the non-legal nature of the punishments, the lack of due process for the person subject to punishment and the absence of records on the imposition of disciplinary sanctions. In Mocoví Prison and San Sebastián Men's Prison, the Subcommittee observed an absolute delegation of authority, which included the institution of informal disciplinary regimes by inmate representatives with the tolerance or acquiescence of prison officials.[18]

38. In several prisons, the police said that they were responsible only for external security, with the inmate representatives being left in control of the situation on the inside. The Subcommittee received numerous reports confirming the "absence of institutional control" in the country's prisons. Persons deprived of their liberty indicated that prison staff could not protect them, since the guards are intimidated by the criminal gangs operating in the prisons and fear for their safety and that of their families.

39. The State's authority has also been supplanted by the self-governance system in the area of record-keeping, with inmate representatives maintaining parallel records of cut-off dates, hearings and other information on prisoners' legal proceedings. In one prison, it was noted that the certificate of remission of sentence was signed by the inmate representatives — a clear sign of self-government.

40. The Subcommittee is concerned about the ways in which the inmate self-governance system prevents detainees from expressing themselves freely and submitting complaints of abuse. The Subcommittee concludes that the combination of prison officials' delegation of authority, the system of inmate self-government and corruption has heightened the possibility that persons deprived of their liberty will be victims of systemic forms of exploitation, ill-treatment and torture and may even lose their lives, with a considerable likelihood of the perpetrators going unpunished. Finally, the Subcommittee notes that the system described above totally distorts the object and purpose — i.e., rehabilitation — of custodial sentences. On several occasions, this delegation of authority was acknowledged by the prison staff, an acknowledgement that, for the Subcommittee, is an admission that the State has abdicated its responsibility to guarantee the fundamental rights of the persons in its custody.

41. **The Subcommittee reiterates the recommendations concerning the system of self-government and the existence of corruption in the prison system that it made in its 2010 report.**[19]

42. **The Subcommittee recommends that the State party:**

[18] De la compulsa de los legajos de los internos se advierte que dichas sanciones escapan a revisión judicial, dado que no se ha encontrado constancia de sanciones remitidas al juez competente a fin de controlar su legalidad, cuando la obligación del representante de los internos era hacer entrega del parte de la sanción a las autoridades del penal y luego ser remitida al magistrado interviniente.

[19] CAT/OP/BOL/R.1, párr. 161.

(a) **Ensure, as a matter of urgency, that good governance prevails in its prisons, while doing away with the system of self-government in facilities where the authorities do not exercise effective control;**

(b) **Investigate all acts of violence and instances of corruption, including the arbitrary imposition of disciplinary sanctions by inmate representatives, and penalize, in accordance with the law, prisoners engaging in such actions and officials who are guilty of acts of omission.**

43. The Subcommittee reiterates its concern about the working conditions of the police officers responsible for prison security and prison record-keeping. Despite the steps taken since the first visit, the Subcommittee noted that the settings in which they work, rest or even receive their meals are unsatisfactory and that they have outmoded facilities and defective or outdated equipment. Low wages are, naturally, another catalyst of corruption.

44. **The Subcommittee recommends that the State party ensure that the number of prison officers is sufficient to guarantee safety and that it improve their working conditions, including with regard to the payment of a decent wage.**

## C. Public Defender Service

45. In its 2010 report, the Subcommittee expressed concern not only about the inadequate infrastructure and resources of the Public Defender Service but also about the small number of defence lawyers it employed. In 2010, the Subcommittee found that just over 50 public defenders served a population of more than 9 million. In addition, the Subcommittee expressed concern about the large differential between the resources allocated to the Public Defender Service and those assigned to the Public Prosecution Service — the ratio of prosecutors to public defenders was 10 to 1 — and about the fact that public defenders were paid half as much as prosecutors were.[20]

46. During its 2017 visit, the Subcommittee noted that a number of institutional changes had been made, in particular the establishment of the Plurinational Public Defender Service by Act No. 463 of 11 December 2013, in which the principle of public defence as a free service for persons who have been accused or are suspects or defendants in criminal cases is reaffirmed.

47. The Subcommittee also noted that the number of public defenders, according to information provided by the Government, has increased to a total of 91. However, the Subcommittee remains concerned about the insufficient number of qualified public defenders, which continues to have an impact on the right to a defence, particularly in rural and poorer areas.

48. In general, public defenders have not been provided with the proper technical facilities or equipment for conducting interviews with their clients. The Subcommittee observed public defenders conducting interviews in open spaces where privacy could not be guaranteed, thereby making it difficult for persons deprived of their liberty to maintain confidentiality while reporting ill-treatment. The combination of poor pay and the lack of the necessary furnishings or equipment for their work, such as a desk or chair, demoralizes lawyers and creates fertile ground for corruption.

49. Persons deprived of their liberty who were interviewed by the Subcommittee stated that they had little or no contact with public defence services, found it hard to identify the public defenders who were to serve as their lawyers and lacked information about the status of their cases. Some indicated that, given the ineffectiveness of the Public Defender Service, they had had to seek private legal services, which were seen as more effective.

50. **The Subcommittee reiterates its recommendation regarding the need to strengthen the institutional structure of the Plurinational Public Defender Service and provide it with the budget and the technical, financial and human resources that it needs to fulfil its mandate. The Subcommittee recommends that the State party**

[20] CAT/OP/BOL/R.1, párrs. 47 y 48.

**increase the Service's budget with a view to recruiting more public defenders, with priority being given to rural areas.**

51. The Subcommittee notes with concern that there is no system for monitoring conditions of detention and, in particular, that neither the Public Prosecution Service nor the Public Defender Service or judicial authorities are responsible for monitoring conditions of detention. The Subcommittee notes with concern that the Public Defender Service does not keep records on cases of torture and ill-treatment and that there are no rules or guidelines on the maintenance of such records.

52. **The Subcommittee recommends that the State party ensure that public defenders fulfil their legal obligation to keep records of the instances of torture or other inhuman treatment reported or mentioned in confidence to them by their clients, as stipulated in article 41 (7) of Act No. 463. In particular, it calls on the State party to train public defenders how to identify and record any instances of torture or ill-treatment and to make it widely known to persons deprived of their liberty that they may submit reports of torture to public defenders.**

53. The Subcommittee noted the absence of defence lawyers for children and adolescents in conflict with the law, who generally depend on the work of children's advocates, and observes that such advocates do not consistently apply the principle of the best interests of the child in judicial proceedings. In one case brought to the attention of the Subcommittee, the defence attorney asked the judge to order the detention of an adolescent during an arraignment. In general, rather than employing other defence strategies that could lead to different results, the aim of the defence attorneys serving adolescents appears to be to ensure the imposition of the lightest penalty possible or to have the judge decide to conduct summary proceedings.

54. **The Subcommittee recommends that the State party set up the specialized technical defence service for children and adolescents provided for in Act No. 463.**

## D. Safeguards

55. The Subcommittee notes with great concern the State party's failure to implement the recommendations it made in its 2010 report regarding the adoption of effective measures to ensure access to a lawyer and a doctor, the right to notify a trusted person, the right to be informed of one's rights at the time of arrest and the establishment of reporting and complaints systems. It became clear during the visits carried out in 2017 that the prisoners' rights mentioned above, which are safeguards against torture and ill-treatment, are still being violated.

56. **The Subcommittee urges the State party to implement its previous recommendations.**

57. In particular, the Subcommittee noted that no clear progress had been made towards fulfilling the State's obligation to maintain an adequate record-keeping system.

58. Under Act No. 2298, prison directors are responsible for keeping records on prisoners up to date.[21] Each of the prisons visited had different ways of keeping records, with some using Excel spreadsheets and some using manual record-keeping systems.

59. The Subcommittee reviewed numerous files and noted with concern the general lack of information on the judges and prosecutors assigned to particular cases and the exact dates of arrest.[22] The information on detainees, which in many cases did not include an identity card number or fingerprints, was incomplete. Furthermore, prison staff explained that they themselves, without relying on any specialized expertise, checked sets of fingerprints against one another when detainees were being released. In many cases, the Subcommittee was unable to find any records on such matters as the amount of time remaining to be served, medical reports, psychological reports or records of transfers or

[21] Ley de Ejecución de Penas, art. 59.

[22] Se asienta el ingreso a la comisaría o servicio penitenciario pero no la fecha efectiva de detención.

disciplinary sanctions. The Subcommittee is troubled by the dispersion and fragmentation of records, as each staff member of the Departmental Directorate of Prisons (including doctors, social workers and lawyers) had his or her own files.

60. As judges do not have uniform records, and as there are no effective alerts regarding the expiration of allowable pretrial detention periods and the completion of convicted persons' sentences, a large number of people remain unlawfully deprived of their liberty, unbeknown to judges and prosecutors, after the maximum pretrial detention period or even after they have served their sentences. The Subcommittee is concerned about the absence of coordination in record-keeping, as such coordination is an essential element in upholding the right of defence and access to justice.

61. **The Subcommittee has concluded that the widespread problem of inadequate record-keeping on cases in which persons are deprived of their liberty in the State party creates gaps in the protection of persons from torture and ill-treatment and is one of the causes of impunity.**

62. The shortcomings of the record-keeping systems observed in police facilities made it impossible to monitor detainee arrivals and departures properly or to verify that detainees' procedural rights were respected. In addition, the Subcommittee noted that the starting dates appearing in the record books in many of the facilities it visited were quite recent.

63. **The Subcommittee reiterates its recommendations concerning the establishment of a uniform record-keeping system and invites the State party to seek assistance from the United Nations High Commissioner for Human Rights in that regard.**[23]

64. **In addition, the Subcommittee recommends that the State party:**

(a) **Establish a reliable computerized alert system to track the amount of time remaining on allowable pretrial detention periods and inmates' sentences;**

(b) **Adopt an institutional policy for the reliable identification of persons deprived of their liberty that provides for the ongoing issuance of identity cards free of charge, fingerprinting and the comparison of fingerprints by experts;**

(c) **Prepare combined compilations of medical, psychological and personal records;**

(d) **Instruct prison directors to ensure strict compliance with Act No. 2298, which will entail the maintenance of up-to-date records and the provision of copies of those records to the relevant judges on a monthly basis;**

(e) **Conduct a survey to identify instances of persons who are still being detained after their release dates and lodge the corresponding criminal charges for unlawful deprivation of liberty.**

[23] CAT/OP/BOL/R.1, párr. 155 (El Subcomité recomienda el establecimiento de un sistema uniforme de registros de entrada, donde como mínimo se deje constancia de la identidad de la persona recluida, los motivos de la detención y la autoridad competente que lo dispuso, así como el día y hora de su ingreso y de su salida. El Subcomité recomienda asimismo el establecimiento de un sistema uniforme de registros de medidas disciplinarias, en el que conste la identidad del infractor, la sanción adoptada, la duración de la misma y el oficial que ordenó la sanción) y párr. 102 (A la luz de todo lo anterior, el Subcomité recomienda al Estado parte: a) Establecer un sistema obligatorio de registros de ingresos y salidas, encuadernado y foliado, donde se hagan constar los motivos que justifican la privación de libertad, la hora exacta de la detención, la hora exacta de ingreso y egreso de la celda, la autoridad que ordenó la detención, la identidad de los funcionarios que hayan intervenido, así como información precisa acerca del lugar de custodia de la persona, y la hora de su primera comparecencia ante el juez u otra autoridad; b) Dejar constancia en registros de los exámenes médicos, de la identidad del médico y de los resultados de dicha visita; c) Dejar constancia en registros de las quejas recibidas, de las visitas de familiares, de abogados o de órganos de supervisión y de los objetos personales de las personas detenidas; d) Entrenar al personal policial para que haga un uso adecuado y consistente de los registros; y e) Supervisar estrictamente el sistema de registros por parte de oficiales superiores, con el fin de asegurar la transcripción sistemática de toda la información relevante relativa a la privación de libertad de personas).

# V. Situation of persons deprived of their liberty

## A. Police stations

65. The Subcommittee observed very poor material conditions in the police stations it visited. Shortcomings in this respect included the lack of a drinking water supply in cells, a lack of health care and hygiene services, the absence of mattresses and/or beds and a failure to provide food to detainees. The Subcommittee observed detainees sleeping on the floor in dirty cells with inadequate infrastructure, poor ventilation and no natural light. While some police stations, such as the integrated police stations in Cochabamba, are of recent construction, the cells seen by the Subcommittee still do not comply with minimum standards in terms of equipment, services and space. In the Subcommittee's view, the cumulative effect of these poor conditions is equivalent to inhuman and degrading treatment.

66. **The Subcommittee recommends that the State party adopt a strategy and provide sufficient financial resources to ensure that police stations and cells meet international minimum standards, including those concerning hygienic conditions and the provision of drinking water and food.**

## B. Prisons and jails

67. The Subcommittee returned to the men's and women's prisons that it had toured on its first visit, as well as other places of detention, including some "*carceletas*" (small prisons or jails) located in rural areas.

### (a) Overcrowding and overpopulation

68. In its 2010 report, the Subcommittee discussed the "unsustainable levels of overcrowding" that it had found in almost all of the country's prisons. Since then, the situation has deteriorated and remains in violation of international standards, with the overcrowding in some prisons being worse than what the Subcommittee had witnessed during its first visit. This is true, for example, of San Pedro Prison in La Paz, whose population stood at 400 per cent of capacity as of 2017.

69. At the San Sebastián Men's Prison, which has a capacity of 200, the Subcommittee found that the population had risen from 600 prisoners in 2010 to 717 in 2017. Eighty per cent of the prisoners there were being held in pretrial detention. The Subcommittee observed some detainees living in deplorable conditions, since, having no cells, they had adapted makeshift sleeping spaces in unsafe, hard-to-reach locations on the roof of the building. Meanwhile the San Roque Prison in Sucre — capacity 235 — housed 527 inmates.

70. The Subcommittee notes the measures taken by the State party to combat overcrowding, such as the expansion of prison infrastructure and the introduction of laws designed to ease congestion by providing for the use of pardons and amnesties and recourse to summary proceedings. However, it is concerned that these measures are short-term and exceptional in nature and do not offer a lasting solution to the structural problem posed by the number of detainees awaiting trial.

71. The Subcommittee notes with great concern that the underlying causes of prison overcrowding in the State party remain in evidence:

(a) The prevalence of recourse to pretrial detention;

(b) Procedural shortcomings in summary proceedings that may promote self-incrimination and plea bargaining;

(c) Deprivation of liberty for failure to pay child support or alimony or to repay employment-related debts;

(d) Failure to implement prisoner release orders due to administrative obstacles or the lack of identity documents for use in monitoring and following up on individual cases.

72. The Subcommittee reminds the State party that extreme overcrowding — as was observed in several locations — violates the rights of persons deprived of their liberty and amounts to cruel, inhuman and degrading treatment. In view of the unsustainable levels of overcrowding and the presence of inmates suffering from tuberculosis at several of the facilities that were visited, the Subcommittee emphasizes that urgent measures are needed and that those measures should "form part of a top-level State policy".[24]

73. **The Subcommittee recommends that the State party:**

(a) **Promote the enhanced use of information technology tools to keep records on persons deprived of their liberty and closely monitor the duration of pretrial detention;**

(b) **Undertake a thorough evaluation of the use of plea-bargaining procedures, ensuring that the rights to a defence and to due process are respected;**

(c) **Ensure the separation of pretrial detainees from convicted prisoners, considering that the former should be subject to a regime that is appropriate to their status as unconvicted persons;**

(d) **Use alternatives to the deprivation of liberty for cases of non-compliance with family maintenance obligations or the non-payment of employment-related benefits.**

### (b) Material conditions

74. The Subcommittee notes that, in general, the material conditions in the country's prisons fall far short of acceptable standards, particularly in the San Pedro, Palmasola, San Sebastián (both the men's and women's facilities) and Mocoví prisons.

75. The country's prison infrastructure is old and, in prisons in La Paz, persons deprived of their liberty have had to modify their cells on their own. San Pedro Prison does not meet minimum standards for hygiene, health services, adequate ventilation or mattresses; the Subcommittee takes the view that conditions of detention in this prison amount to cruel, inhuman and degrading treatment.

76. **The Subcommittee reiterates the recommendations it made to the State party in 2010 and calls upon it to take urgent action to close the prisons of San Pedro in La Paz and Palmasola in Santa Cruz.**

77. Persons deprived of their liberty do not have an adequate standard of living, since their access to food, medical attention, medicines, clothing, beds and personal hygiene items depends mainly on their financial means and often on the support of family members. Some detainees had been paid their daily meals allowance (*prediario*) more than one month late. The Subcommittee was informed that minors living with their mothers in prison did not receive a daily meals allowance.

78. The Subcommittee observed extremely unsanitary conditions at the Chonchocoro, San Sebastián (men's) and San Pedro prisons, where drinking water and sanitation services are in short supply. At Chonchocoro Prison, access to drinking water is intermittent, and it is non-existent in what is known as the "*lorera*", an area where prisoners are overcrowded and must share a foul-smelling toilet.

### (c) Prison activity programmes

79. In some prisons, the Subcommittee noted that some physical spaces were set aside for primary and/or secondary studies and for workshops, chiefly for carpentry, weaving, tailoring and hairdressing. Cooking and doing laundry are regarded as women's work in the

[24] CAT/OP/BOL/R.1, párr. 143.

country's prisons. In San Roque Prison, in Sucre, the Subcommittee observed classrooms that are used for a university course of study in agronomy.

80. The Subcommittee notes with concern that only a limited number of inmates have access to such activities and that the organization of activities and the provision of working materials and inputs are largely controlled by inmate representatives.

81. Access to reading materials such as magazines, newspapers and books is almost non-existent, except at the Arani facility, where the Subcommittee observed a cell that is used as a library and contains a computer for the prisoners' use. However, this space also serves as the inmate representative's office and is rented out to other inmates for use for conjugal visits.

82. While the Subcommittee noted the presence of social workers, paramedics, psychologists and nurses in some of the facilities it visited in La Paz, Cochabamba and Sucre and at Palmasola Prison, it did not see professional teams at work and notes that, in many cases, only a single professional (who had no medical supplies) was responsible for the care of the entire prison population. This situation must be addressed as a matter of urgency.

83. The lack of a systematic, organized range of activities open to all persons deprived of their liberty in prisons and jails means that there is very little chance that the objective of sentencing, namely social rehabilitation, will be achieved.

84. **The Subcommittee recommends that the State party:**

(a) **Strengthen the role of sentence enforcement judges in monitoring the material conditions of detention, oversee their performance and ensure that prison authorities improve living conditions in those facilities;**

(b) **Strengthen the capacity of departmental authorities to mainstream a human rights approach in prison policy and ensure that inter-agency measures are such as to meet the minimum standards for prison infrastructure, particularly in respect of air quality, floor space[25] and the separation of untried prisoners from convicted prisoners;**

(c) **Allocate public resources for the improvement of material conditions in prisons, with priority being placed on the facilities where the needs are greatest, and invest in areas such as infrastructure upgrades, health and hygiene, drinking water supply and the space allocated to cells, sleeping areas and common spaces;**

(d) **Develop prison policy guidelines and allocate funds for the organization of vocational, educational, cultural, sport and recreational activities in prisons. In developing activity programmes, prison authorities should take the good practices in use at San Roque Prison in Sucre as a reference point and ensure that persons deprived of their liberty who have been marginalized by reason of disability, migration status, age, sex, gender or race have equal access to those activities.**

## C. Social reintegration centres for adolescents in conflict with the law

85. The Subcommittee welcomes the adoption of the new Children and Adolescents Code (Act No. 548) in 2014 and appreciates the State party's efforts to incorporate a restorative justice approach into the new juvenile criminal justice system. However, the Subcommittee is concerned by the fact that the State party has reduced the age of criminal responsibility from 16 to 14 years.

86. The Subcommittee had the opportunity to visit two social reintegration centres for adolescents in conflict with the law, namely the Cometa Centre in Cochabamba and the Nueva Vida Santa Cruz Social Reintegration Centre for Juvenile Offenders (CENVICRUZ)

[25] Reglas Mínimas de las Naciones Unidas para el Tratamiento de los Reclusos (Reglas Nelson Mandela), regla 10.

in Santa Cruz, where it held talks with the personnel responsible for security and those in charge of a number of the activities offered there, as well as with the juvenile detainees.

87. The Subcommittee is deeply troubled by the material conditions of detention at both centres. At the Cometa Centre, the Subcommittee encountered serious overcrowding and observed that supplies of drinking water were totally lacking and the adolescents housed there had no access to shower facilities. Both centres exhibited deplorable hygiene and sanitation conditions in cells, kitchen areas and bathrooms (cracks in the walls, unusable toilets, nauseating odours, contaminated water, rat droppings in the kitchen storage areas at CENVICRUZ and flies and insects in or on food). The worst conditions of all were observed in the isolation and punishment cells of both facilities.

88. The Subcommittee was told by a number of the inmates that daily food rations were meagre.

89. The Subcommittee noted that CENVICRUZ is located in a remote area, which makes family visits difficult, and that the adolescents are not allowed to make telephone calls.

90. The Subcommittee takes note with satisfaction of the existence of a micro-hospital and an education centre (established just three months ago) at the CENVICRUZ facility, along with agricultural and crafts workshops and sporting activities for detainees.

91. The Subcommittee observed that the inmates of CENVICRUZ are placed in different sections depending on whether they have been convicted, are being held in pretrial detention or are between 14 and 15 years of age. The Subcommittee is concerned that girls and young women at the Cometa Centre are accommodated in a separate, isolated area and do not have access to the same activities as male inmates.

92. **In light of the above, the Subcommittee recommends that:**

(a) **Material conditions in social reintegration centres should be improved immediately, especially with regard to minimum floor space per juvenile detainee, hygiene and ventilation;**

(b) **These centres should be given a sufficient budget to enable them to purchase more plentiful and better-quality food for the adolescents housed there. They should receive at least two meals a day of sufficient nutritional value to maintain their health and strength;**

(c) **The adolescents in these centres should be given at least two litres of drinking water a day, without fail and free of charge;**

(d) **The adolescents in these centres, including those placed in isolation, should have regular access to toilets and showers in which adequate sanitary conditions are maintained and should be provided with beds with mattresses;**

(e) **The necessary steps should be taken to encourage visitors to come to the centres by providing free transportation for friends and family members and to increase inmates' contact with the outside world by, inter alia, allowing them to make telephone calls at least once a week;**

(f) **Efforts should be undertaken to provide greater education and vocational training opportunities to the adolescents in these centres.**

## D. Courthouse holding cells

93. The Subcommittee visited the police holding cells located at the courts of justice in Santa Cruz and La Paz and took note with concern of the overcrowding and unsatisfactory conditions in those cells.

94. The Subcommittee noted that persons deprived of their liberty might remain in these cells for several days or even weeks, which is not their intended purpose. [26] This is chiefly a result of the courts' large case backlog, which is compounded by mismanagement. The Subcommittee interviewed persons whose release had been authorized but who continued to be held in these cells in inhuman conditions owing to bureaucratic issues (for example, because the court clerk had forgotten to sign the release papers before going on leave). In other cases, detainees were awaiting the outcome of their appeal against pretrial detention orders.

95. Given that the facilities were not designed for long periods of detention, the detainees were not fed or provided with beds. Several detainees slept on the floor; in some cases, two of them shared a straw mattress. Those who did not receive family visits depended on the goodwill of other inmates for their sustenance. The police officers overseeing the facility charged the detainees for letting them use the shower.

96. The Subcommittee is concerned by the fact that medical care is not provided to persons in the holding cells that it visited. The Subcommittee witnessed one detainee suffering the onset of an epileptic seizure — which was met with the indifference by the custody officers — and had to insist that an ambulance be called.

97. **The Subcommittee recommends that the State party:**

(a) **Urgently address the case backlog in the courts and determine the reasons why hearings are deferred;**

(b) **Ensure that the maximum allowable duration of detention is not exceeded by regularly inspecting courthouse holding cells and checking police logs on the admission and release of detainees;**

(c) **Ensure that detainees have immediate access to basic necessities, food and medical care.**

## E. The psychiatric hospital

98. The Subcommittee visited the Gregorio Pacheco National Institute of Psychiatry in Sucre, the only public establishment of its kind in the State party. The Institute accommodates 320 persons, including 270 who were admitted in response to situations of neglect and poverty and 8 whose committal had been ordered by the courts after finding the person unfit to stand trial by reason of "mental disability". The hospital operates as a detoxification centre under the corresponding General Health System guidelines but is not subject to any form of mental health legislation.

99. The Subcommittee was informed that most patients enter the Institute voluntarily, although some had requested institutionalization under pressure from family members who could not care for them. The Subcommittee is concerned about cases in which admission to the psychiatric hospital is a consequence of patients' socioeconomic status and about the fact that the institution appears to function as a social assistance shelter, without benefit of any specific guidelines for the provision of psychosocial treatment. It is also concerned about the absence of psychosocial support services that could facilitate patients' transition to living in the community.

100. During its visit, the Subcommittee encountered several persons who had been subjected to physical restraints, tied to chairs in corridors and in some cases bound by their hands and feet. The Subcommittee observed a woman tied by her feet to a chair in one of the inpatient units and a man who had been tied up in the men's "acute" inpatient unit. The Subcommittee was told about the use of physical restraints in beds and rooms and it confirmed that patients might remain tied up all day long. The Subcommittee viewed medical records that clearly detailed the recurrent use of mechanical restraints such as handcuffs and leg irons, in some cases for prolonged periods of time.

[26] Las celdas judiciales tienen por objetivo el resguardo de personas por el plazo de horas, para llevarla ante el juez y/o para la obtención del mandamiento de detención en el respectivo centro penitenciario.

101. The Subcommittee was informed that the hospital had recently introduced the use of electroconvulsive therapy. The Subcommittee is concerned about the absence of a complaints mechanism and legal assistance services which would allow patients to report torture and ill-treatment.

102. The Subcommittee notes with concern the lack of judicial oversight of the confinement of persons declared unfit to stand trial in a criminal court. The absence of any form of interaction between judicial authorities and such persons means that the period of confinement may continue even after the disability has been overcome.

103. The infrastructure at the National Institute of Psychiatry is adequate. However, the Subcommittee observed that some rooms and spaces in the inpatient units were so scantily furnished that they were totally impersonal. Rooms contained nothing more than a bed and a bathroom; common areas appeared to have only dining tables and some plastic chairs.

104. **The Subcommittee recommends that the State party should:**

(a) **Enact mental health legislation regulating the operation of public and private psychiatric institutions in the country;**

(b) **Implement legislative and administrative measures to prevent patients from being admitted and remaining in psychiatric hospitals for socioeconomic reasons and adopt a strategy for the deinstitutionalization of patients who have been admitted on the basis of disability and/or poverty and neglect;**

(c) **Set up a complaints mechanism that is readily accessible to persons who are institutionalized in psychiatric hospitals and provide information about its existence in accessible formats;**

(d) **Conduct regular inspections in psychiatric hospitals and deliver training to staff on the international obligations relating to the protection of the human rights of persons with disabilities, as established in the Convention on the Rights of Persons with Disabilities.**

# VI. Situation of vulnerable groups

## A. Indigenous justice system

105. The Subcommittee notes the progress made in connection with the indigenous justice system, including the advances represented by a number of decisions handed down by the Constitutional Court and the drafting of a protocol for coordination and cooperation between the ordinary and indigenous courts. However, the Subcommittee regrets that, because certain material and territorial matters are excluded from the scope of the indigenous justice system, the Jurisdiction Demarcation Act does not conform to the Constitution or to international law. Consequently, the Subcommittee is concerned that, in practice, access to justice is still impeded for certain sectors of the population.

106. The Subcommittee met with indigenous community leaders who claimed that, even where it is legally possible, judges in the ordinary justice system do not refer cases to the indigenous courts because of cultural issues. Furthermore, the Subcommittee learned of violations of due process rights in the ordinary justice system, such as when hearings are indefinitely adjourned owing to a lack of indigenous-language interpreters.[27]

107. The Subcommittee notes with concern that the excessive use of pretrial detention disproportionately affects indigenous persons because their situation does not allow them to meet the requirements for alternative measures: they are asked to provide a fixed address, even when they live in community villages, and to declare a formal occupation, though they often work in the informal sector of the economy.

108. Confinement is particularly harmful to the physical and psychological health of indigenous persons because detention facilities have not been designed to accommodate

[27] Caso de Adolfo Chávez, de lengua indigena tacaña, por ejemplo.

persons with a different language, culture and world view from the rest of the population and often reproduce patterns of discrimination. Moreover, custodial sentences are virtually unknown in the indigenous justice system; hence the Subcommittee's jurisprudence states that "for many indigenous persons, imprisonment constitutes cruel, inhuman and degrading treatment".[28]

109. The Subcommittee is troubled by reports of excessive use of force and allegations of torture in the context of social protests such as the march held to defend the Isiboro Sécure National Park and Indigenous Territory in September 2011. The Subcommittee is also concerned by the lack of progress in the Public Prosecution Service's investigation into related human rights violations, including torture.

110. **The Subcommittee urges the State party to expedite the implementation of the indigenous justice system in order to relieve pressure on the judicial and prison systems and guarantee effective access to justice for all Bolivians. It also urges the State party to strengthen the pluralistic justice system in accordance with the Constitution.**

111. **The Subcommittee recommends that the State party:**

(a) **Ensure that due process rights are upheld, including, in particular, the right of indigenous persons to a defence and to information concerning their detention and their right to use their own language;**

(b) **Take into account the culture and the economic and employment situation of indigenous persons when ordering precautionary measures;**

(c) **Conduct an independent and impartial investigation into allegations of torture in the context of social protests while protecting witnesses and victims.**

## B. Women

112. In the course of the Subcommittee's visits to the Trinidad Women's Prison in Beni, San Sebastián Women's Prison in Cochabamba and the women's sections of Palmasola Prison in Santa Cruz and San Roque Prison in Sucre, it heard reports of physical ill-treatment by the police at the time of some detainees' arrests. The Subcommittee regrets that a medical examination is not conducted upon a detainee's arrival, since this means that physical abuse occurring prior to admission cannot be documented or investigated.

113. The Subcommittee is concerned about:

(a) The disproportionate impact of Act No. 1008, whose provisions are most frequently applied to women. The Subcommittee was informed that the number of female prisoners has multiplied in recent years;

(b) The consequences of pretrial detention, which affects women disproportionately because of its serious psychological impact on mothers with children in their care. The Subcommittee was informed that, in La Paz, 78.2 per cent of female prisoners are awaiting trial, which is a significantly higher figure than the percentage of male prisoners in pretrial detention (70 per cent);

(c) Prison records do not provide specific information on women deprived of their liberty who are mothers, children who are living with their mothers in prison or women prisoners who are pregnant or nursing babies;

(d) The overnight confinement regime at the Trinidad Women's Prison, which applies even to women with children and does not permit them to visit the toilet or to access emergency exits;

(e) The lack of gynaecological care, especially for pregnant women, and the lack of feminine hygiene products, which obliges women either to buy their own products or to depend on the charity of fellow detainees.

[28] CAT/C/50/2, párr. 93.

**114. The Subcommittee reiterates the recommendation contained in its report of 2010 concerning gender mainstreaming in the programmes and policies of the Directorate-General of Prisons.**

**115. The Subcommittee recalls rule 58 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) on alternatives to pretrial detention and sentencing alternatives for women. The Subcommittee recommends that the State party:**

**(a) Take into account the heightened vulnerability of women and the principle of the best interests of the child and widely implement alternatives to custodial sentences in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the Bangkok Rules, including in the case of offences under Act No. 1008;**

**(b) Improve records containing information on vulnerable groups, including women;**

**(c) Accelerate its efforts to upgrade prison infrastructure and ensure that health-care services aimed specifically at women and the accommodation of women's specific hygiene needs are in line with the Bangkok Rules (rules 5 to 13).**

## C. Children and adolescents in conflict with the law

116. The Subcommittee welcomes the adoption of the new Children and Adolescents Code (Act No. 548) in 2014, the creation of a specialized juvenile court system and the establishment of social reintegration and counselling centres.

117. However, the Subcommittee is concerned that by the fact that deprivation of liberty is not used only as a measure of last resort and that recourse to pretrial detention for children and adolescents aged 14 to 18 years remains widespread. The Subcommittee is also concerned that the State party has lowered the age of criminal responsibility from 16 to 14 years and the age of admission to military service from 18 to 17 years.

**118. The Subcommittee recommends that deprivation of liberty should be applied to adolescents only as a measure of last resort, for the shortest possible period of time, and subject to regular review with a view to its discontinuation. The Subcommittee also recommends that the State party:**

**(a) Develop alternative non-custodial sentences, such as probation, mediation, community service and suspended sentences, and apply them wherever possible;**

**(b) In the case of minors aged between 14 and 18 years, implement alternative non-custodial measures as a matter of priority;**

**(c) Raise the age of admission to military service from 17 to 18 years.**

## D. Persons with disabilities

119. The Subcommittee is concerned at the situation of persons with intellectual and/or psychosocial disabilities who are deprived of their liberty. The Subcommittee observed cases of disability-based discrimination and a lack of reasonable accommodation,[29] particularly in adult prisons and juvenile centres.[30]

120. The Subcommittee noted with great concern that detainees with intellectual and/or psychosocial disabilities (including in the case of one teenager) were held indefinitely in isolation and punishment cells even though they were not subject to any disciplinary

[29] Convención sobre los Derechos de las Personas con Discapacidad, arts. 4 y 14, párr. 2.

[30] Véase la sección V, subsección E, "Hospital psiquiátrico" *supra*, sobre personas con discapacidad en esa institución.

sanction, thus exacerbating their condition[31] and limiting their rights and their access to recreational activities. The Subcommittee noted that prison staff lacked the knowledge and skills needed to deal with disability issues and therefore wrongly resorted to isolation as a "protective measure".

121. **The Subcommittee recommends that a campaign be carried out to train prison staff and to promote the rights of persons with disabilities who are deprived of their liberty.**

122. The Subcommittee is also concerned that detainees' files do not contain records of official psychological evaluations, which limits the possibility of providing reasonable accommodation or the specialized health services that may be required by prisoners with disabilities.

123. Like other persons deprived of their liberty, the prisoners with disabilities who were interviewed by the Subcommittee reported shortcomings in terms of access to and enjoyment of their right to health, including in relation to mental health services.[32]

124. **The Subcommittee recommends the establishment of a national plan of action to ensure adequate and free access to health care for persons with disabilities who are deprived of their liberty.**[33]

125. **The Subcommittee recommends that, where appropriate, access should be provided to a psychological/psychiatric examination free of charge. It also recommends the full observance and implementation of the relevant Criminal Code provisions (particularly articles 79 and 80) and procedural rules, viewed in the light of the Nelson Mandela Rules,**[34] **by all members of the judiciary and the Public Prosecution Service.**

## VII. Reprisals and repercussions of the visit

126. The Subcommittee is concerned with ensuring that, when carrying out its functions under the Optional Protocol, the situation of persons with whom it comes into contact is not prejudiced.

127. During the visit, the Subcommittee shared its grave concerns with the authorities about the situations it had encountered in the Mocoví Men's Prison. In the Subcommittee's presence, the inmate representatives entrusted with maintaining discipline in block D threatened the prisoners with physical punishment if they continued to inform the Subcommittee about their situation. The Subcommittee noted with serious concern that there was a general sense of fear; a number of inmates refused to talk with the Subcommittee, citing possible punishment. The occurrence of reprisals as a result of the Subcommittee's visit was corroborated during the follow-up visit conducted by representatives of the country office of the Office of the United Nations High Commissioner for Human Rights, who found that at least one person had been hospitalized as a result of the physical punishment to which he had been subjected.

128. In letters dated 8 May, 21 June and 7 July 2017, the Subcommittee requested detailed information about the measures that had been adopted. In each instance the State party responded within the set time frame. However, in the Subcommittee's opinion, the measures adopted by the State party did not effectively ensure that an investigation would be carried out, nor did they provide guarantees of non-repetition.

129. **The Subcommittee recommends that the State party promptly, impartially and effectively investigate alleged reprisals and acts of intimidation so that those responsible are brought to justice and so that suitable redress is provided to victims.**

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[31] Reglas Nelson Mandela, regla 45, párr. 2.
[32] Ibid., regla 109, párrs. 2 y 3.
[33] Convención sobre los Derechos de las Personas con Discapacidad, art. 25.
[34] Reglas Nelson Mandela, regla 109, párr. 1.

130. In accordance with the provisions of articles 2 (4), 12 (b) and (d) and 14 (1) (a) and (b) of the Optional Protocol and in fulfilment of its mandate, the Subcommittee will continue to actively engage in follow-up actions as part of its dialogue with the Plurinational State of Bolivia with a view to the protection of the rights of persons deprived of their liberty.

131. **Having undertaken a rigorous analysis, the Subcommittee considers that the State party has not taken sufficient steps to ensure that all suspected reprisals and acts of intimidation are promptly, impartially and effectively investigated and that those responsible are brought to justice, in accordance with article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 15 of the Optional Protocol thereto. Therefore, and taking into account that the State party has not implemented the Subcommittee's other recommendations either, the Subcommittee proceeds to invoke the mechanism provided for by article 16 (4) of the Optional Protocol.**

## VIII. Conclusion

132. **It is the Subcommittee's expectation that the State party will establish a solid institutional structure for the prevention of torture as a matter of priority. The Subcommittee urges the authorities to implement the recommendations set forth in each of its visit reports and to authorize their publication.**

# Anexos

## Anexo I

### Lista de altos funcionarios y otras personas con las que se reunió el Subcomité

### A. Autoridades nacionales

*Ministerio de Gobierno*

Sr. Carlos Romero Bonifáz, Ministro de Gobierno

Sr. José Luis Quiroga Altamirano, Ministro Adjunto de Asuntos Internos y Policía

Sr. Jorge López Arenas, Director General del Régimen Penitenciario

*Ministerio de Justicia*

Sr. Diego Jiménez Guachalla, Viceministro de Justicia y Derechos Fundamentales

Sr. César Augusto Romano, Director del Servicio Nacional de la Defensa Pública

Sr. Gilvio Janayo Caricari, Viceministro de Justicia Indígena y Campesina

Sr. Álvaro Guzmán, Director del SEPRET

Equipo del SEPRET

*Ministerio de Relaciones Exteriores*

Sra. Guadalupe Palomeque de la Cruz, Viceministra de Relaciones Exteriores

*Ministerio de Defensa*

Sr. Reymi Ferreira Justiniano, Ministro de Defensa

Sra. Liliana Guzmán Gorena, Dirección General de Derechos Humanos e Interculturalidad en las Fuerzas Armadas

*Policía Nacional*

Sr. Abel Galo de la Barra Cáceres, Comandante General

*Poder Judicial*

Representantes del Tribunal Constitucional

Representante de la Justicia de Ejecución Penal

Representante del Consejo de la Magistratura

*Ministerio Público*

Representante de Fiscalía de Distrito

*Defensoría del Pueblo*

Sr. David Tezanos Pinto, Defensor del Pueblo

Sr. Eduardo Cuenca

## B. Organismos de las Naciones Unidas

Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en el Estado Plurinacional de Bolivia

Coordinadora Residente de las Naciones Unidas en el Estado Plurinacional de Bolivia

Fondo de las Naciones Unidas para la Infancia (UNICEF)

## C. Sociedad civil

Asamblea Permanente de Derechos Humanos de Bolivia (APDHB)

Asociación Boliviana contra la Esclerosis Múltiple

Centro de Estudios Jurídicos e Investigación Social (CEJIS)

Comunidad de Derechos Humanos

Federación Boliviana de Sordos (FEBOS)

Fundación CONSTRUIR

Instituto de Terapia e Investigación sobre las secuelas de la tortura y la violencia estatal (ITEI)

Progettomondo

Sociedad Boliviana de Ciencias Forenses

## D. Autoridades y dirigentes indígenas

Dirigentes y autoridades indígenas de la Amazonia Sur, Tierras Bajas, así como varias comunidades en Sucre y Santa Cruz

## E. Otros

Abogada Daniela Vázquez (representante de pueblo indígena en el seaso Takovo Mora)

Agencia Suiza para el Desarrollo y la Cooperación, Estado Plurinacional de Bolivia

Sr. David Inca (activista de derechos humanos)

# Anexo II

## Lista de los lugares de privación de libertad visitados por el Subcomité

### A. Dependencias de la Policía Nacional

*Dirección Nacional de la Fuerza Especial de Lucha Contra el Narcotráfico* (FELCN)

Jefatura Departamental FELCN — Sopocachi, La Paz

Jefatura Departamental FELCN — Santa Cruz de la Sierra

*Dirección de la Fuerza Especial de Lucha Contra el Crimen (FELCC)*

Dirección Departamental de la FELCC — Cochabamba

Dirección Departamental de la FELCC — Santa Cruz de la Sierra

*Otras*

FELCC El Alto, La Paz

FELCC Punata, Cochabamba

Estación Policial Integral EPI Sur, Cochabamba

Estación Policial Integral EPI San Roque, Sucre

Instituto de Policía de Chuquisaca, Sucre

Módulo Policial de Distrito, La Paz (visita conjunta con el SEPRET)

Celdas judiciales en Santa Cruz y La Paz

### B. Centros penitenciarios

San Pedro, La Paz (visita conjunta con el SEPRET)

Chonchocoro, La Paz

Palmasola, Santa Cruz

San Sebastián (mujeres), Cochabamba

San Sebastián (hombres), Cochabamba

Carceleta Arari, Cochabamba

San Roque, Sucre

Cárcel de Trinidad (mujeres), Trinidad

Mocoví, Trinidad

### C. Dependencias de las Fuerzas Armadas

Cuartel General de Miraflores, centro de detención de la Policía Militar, La Paz (visita conjunta con el SEPRET)

## D. Centros de reintegración social para niños, niñas y adolescentes

Centro de Reintegración Social Cenvicruz, Santa Cruz

Centro de Reintegración Social Cometa, Cochabamba

## E. Hospitales psiquiátricos

Hospital Psiquiátrico San Juan de Dios, Sucre